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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)  Total Number of Pages in This Submission: 5	Application Number	10/769,786
	Filing Date	February 28, 2004
	First Named Inventor	Paul Brent Rivers
	Art Unit	3721
	Examiner Name	Paul Durand
	Attorney Docket Number	BS030553
<b>ENCLOSURES</b>		
(Check all that apply)		
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Name (Print/Type)	Bambi Faivre Walters	Reg. No.: 45,197
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Date	MARCH 4, 2005	

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MAR 04 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of: Paul Brent Rivers et al.

Group Art Unit: 3721

Application No.: 10/789,786

Examiner: Paul R. Durand

Filed: February 28, 2004

Title: "Driver Cap"

VIA FACSIMILE 703-872-9306

TC3700

Attn: Examiner Durand

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37 C.F.R. § 1.143 Request for Reconsideration  
of Requirement for Restriction

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Commissioner:

This paper is filed in response to the first Office Action, mailed February 10, 2005, in the above-identified application. The United States Patent and Trademark Office ("Office") imposed a restriction requirement. Assignee hereby requests reconsideration and withdrawal of this restriction requirement.

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Response to Restriction Requirement

### **PROVISIONAL ELECTION**

The Office alleges that this patent application contains three (3) groups of patentably distinct species. As 37 C.F.R. § 1.143 requires, the Assignee provisionally elects the group identified as "a. [t]he species shown in figures 1-5." The claims identifying this group are 1-11 and 19.

### **REPLY AND TRAVERSAL**

The Assignee respectfully requests reconsideration and withdrawal of this restriction requirement. The Assignee traverses this restriction requirement by relying upon the following reasons.

#### **1. RESTRICTION IS A VIOLATION OF DUE PROCESS**

Maintaining this restriction is a violation of due process. The Office has wholly failed to factually support this restriction requirement. If the Office wishes to factually support a restriction, a second office action is then required. This second office action must follow the requirements of § 803 of the MPEP. This second office action also cannot maintain the restriction requirement — this second office action may ONLY properly present the reasons for a restriction. Once the Office properly follows § 803, and properly supports a restriction requirement, the Assignee must be given another opportunity to rebut the restriction requirement. ANY OTHER ACTION IS A VIOLATION OF DUE PROCESS.

#### **2. NO SHOWING OF INDEPENDENT OR DISTINCT INVENTIONS**

The Office makes no attempt to show the claims are independent or distinct. One criterion for restriction is that the alleged inventions in a single application must be independent or distinct. *See* U.S. DEPT. OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 803 (8<sup>th</sup> Ed. 2001). The Office must provide reasons and/or examples to support the requirement of restriction. *See id.*

The Office has failed to satisfy this criterion. The restriction requirement offers no explanation, nor reasoning, to support the requirement of restriction. *The Office offers no*

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*discussion of how, or why, the claims are independent or distinct.* This restriction requirement, then, is improper and must be withdrawn.

Maintaining this restriction is, again, a violation of due process. The Office makes no attempt to satisfy their legal duty. The Office must provide reasons for a restriction, and the Office must give the Assignee an opportunity to rebut. Once the Office properly shows a burden exists on the Examiner, the Assignee must be given another opportunity to rebut the restriction requirement. ANY OTHER ACTION IS A VIOLATION OF DUE PROCESS.

### 3. NO SHOWING OF BURDEN

The Office provides no *prima facie* showing of serious burden. Another criterion for restriction is that there must be a "serious burden" on the Examiner. See U.S. DEPT. OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 803 (8<sup>th</sup> Ed. 2001). The Office may make a *prima facie* case for restriction, using "appropriate explanation," of i) separate classification, ii) a separate status in the art, or iii) a different field of search. *Id.* See also *id.* at § 808.02.

The Office makes no attempt at a *prima facie* case. The Office makes no mention of any burden on the Examiner. The Office makes no attempt to show the claims define inventions having separate classifications, separate statuses in the art, or different fields of search. Because the Office makes no attempt to satisfy their *prima facie* burden, the restriction requirement is improper and must be withdrawn.

Maintaining this restriction is, again, a violation of due process. The Office makes no attempt to satisfy their legal duty. The Office must provide reasons for a restriction, and the Office must give the Assignee an opportunity to rebut. Once the Office properly shows a burden exists on the Examiner, the Assignee must be given another opportunity to rebut the restriction requirement. ANY OTHER ACTION IS A VIOLATION OF DUE PROCESS.

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#### 4. REASONING IS INADEQUATE

The reasons relied upon by the Office are inadequate. The Office must concisely state the reasons for alleging either an independent or a distinct invention. See U.S. DEPT. OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 816 (8<sup>th</sup> Ed. 2001). "A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given." *Id.*

Here, however, no reasoning whatsoever is given. The Office has made mere conclusive statements without any supporting reasons. This restriction requirement, then, is not proper and must be withdrawn. ANY OTHER ACTION IS A VIOLATION OF DUE PROCESS.


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The Office, in summary, has improperly imposed a restriction requirement. The Office wholly fails in their procedural duty. The Office makes no attempt to show the claims define independent inventions or distinct inventions, the Office provides no *prima facie* showing of serious burden on the Examiner, and the Office fails to provide supporting reasons. This restriction requirement, then, is a violation of due process and must be withdrawn.

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If the Office has any questions, the Office is invited to contact the undersigned at (757) 253-5729 or [bambi@wzpatents.com](mailto:bambi@wzpatents.com).

Respectfully submitted,



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